

FILED
GREAT FALLS DIV.

2011 DEC 28 PM 3 05

PATRICK E. DUFFY, CLERK

BY _____

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

JOHN PAUL DEWEY,

Defendant/Movant.

No. CR-08-76-GF-SEH

ORDER

Defendant filed Notice of Appeal¹ on December 1, 2011. According to the Notice, Defendant appeals from the Court's Order of November 30, 2011. Fed. R. App. P. 22(b) requires this Court to determine whether a certificate of appealability should issue.

"A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

¹ Document No. 141

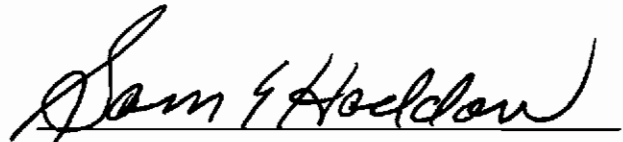
The standard is satisfied if “jurists of reason could disagree with the district court’s resolution of [the] constitutional claims” or “conclude the issues presented are adequate to deserve encouragement to proceed further.” Miller-El v. Cockrell, 537 U.S. 322, 327 (2003) (citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

The Court denied Defendant’s two claims in his § 2255 motion because they lacked merit. The Court has again reviewed the record and its reason for denying Defendant’s § 2255 motion. The absence of merit in Defendant’s § 2255 motion is clear from the record and is not debatable among reasonable jurists. Defendant’s guilty plea, made under oath, was knowing, voluntary, and intelligent. Defendant’s motion to withdraw a guilty plea before sentencing fails because it meets neither prong of the Strickland and Hill tests. There is no reason to encourage him to proceed further with these claims.

ORDERED:

For the reasons stated in the Court’s previous Orders in this matter, as well as for the reasons stated above, the certificate of appealability is DENIED.

DATED this 28th day of December, 2011.


SAM E. HADDON
United States District Judge